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When Spies Go to Court

The Central Intelligence Agency has always played by its own rules. Nowhere has this been more evident than in the spy agency's guerrilla war with those who write about CIA deeds and misdeeds.

Now a federal judge has given the CIA and its agents a veritable nuclear bomb to drop on anyone who has the temerity to criticize them. Here's the appalling story:

David Atlee Phillips is a litigious former spook who was accused by author Donald Freed of trying to cover up the CIA's alleged advance knowledge of plans to assassinate Chilean exile leader Orlando Letelier. The distinguished former ambassador was killed by a bomb in 1976 as he was driving along Embassy Row in Washington. A young American co-worker, Ronni Moffitt, was also killed in the bomb blast.

Phillips filed a multimillion-dollar libel suit against Freed for the accusations contained in his book, "Death in Washington." But Phillips has refused to follow the standard rules of legal discovery and answer questions asked by the defendant's lawyer about CIA activities—which are obviously a vital ingredient of Freed's defense against the libel charge.

The CIA has backed Phillips all the way. The agency even sent a lawyer and a classification expert to Phillips' deposition to make sure he didn't answer any questions that would embarrass the agency. They hauled out the Watergate-tarnished shield of "national security"—and U.S. District Judge Thomas Jackson bought their arguments. He ruled that Phillips didn't have to answer questions about his CIA work, even though that's what the libel suit is all about.

The decision in the Phillips case has given civil liberties experts the chills. They point out that Judge Jackson's decision, if allowed to stand, would effectively muzzle anyone who writes something the CIA or its former agents don't like. The threat of a libel suit, in which the defense is shackled, is enough to scare off all but the most reckless writers and publishers.

Phillips was the logical choice to carry the CIA's banner in this disturbing case. After leaving the CIA in 1975, Phillips founded the Association of Former Intelligence Officers and later a "legal action" group called CHALLENGE. According to Phillips, the purpose of CHALLENGE was "to assist former intelligence persons who have been libeled or slandered."

In a fund-raising letter, Phillips explained his plans this way: "It's time to challenge this malicious treatment in public print and public forums. A test case should be mounted against writers who defame ex-intelligence officers."

According to court testimony, Phillips raised more than $30,000 for such a test—and the first one he brought was his own. He sued Washingtonian Magazine over a story that linked him to presidential assassin Lee Harvey Oswald. The libel suit was thrown out by a Montgomery County judge. Phillips then used his CHALLENGE funds to go after Freed.

Freed had charged in his book that Phillips was head of Latin American operations until his retirement in 1975, and thus was closely tied to DINA, the Chilean secret police, whose chief was later indicted for the Letelier-Moffitt murders.

But when asked about his CIA background by Freed's lawyers, Phillips refused to answer, saying that to describe his work for the agency would violate his secrecy agreement. The CIA gladly backed him in his refusal.

Freed's lawyers asked for a dismissal. One judge did, in fact, order Phillips to answer on details of his CIA work. But then the case was assigned to Judge Jackson, who reversed the earlier order and let Phillips keep mum.

Phillips' deposition was taken in March. Two CIA officials and a deputy assistant U.S. attorney were on hand to screen the questions Freed's lawyers asked. Phillips refused to answer any questions on his CIA work or his connection with Chile.

In short, he refused to discuss the details of the alleged events that formed the entire basis of his lawsuit. And the judge went along with it. So what we have is a plaintiff who can sue with impunity and with no fear of embarrassment. He's eating his cake and having it too.

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